

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Group Art Unit: 1796

HANS PETER WEITZEL ET AL.

Examiner: Alexander C. Kollias

Serial No.: 10/596,266

Filed: June 7, 2006

For: **USE OF BIOCIDE-CONTAINING, WATER-REDISPERSIBLE POLYMER POWDER COMPOSITIONS IN MINERAL CONSTRUCTION MATERIALS**

Attorney Docket No.: WAS 0768 PUSA

**RESPONSE TO NOTICE OF NON-COMPLIANT
APPEAL BRIEF UNDER 37 CFR § 41.37**

Mail Stop Appeal Brief- Patents
Commissioner for Patents
U.S. Patent & Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the Notification of Non-Compliant Appeal Brief dated May 20, 2011, kindly substitute the attached Section "V. SUMMARY OF CLAIMED SUBJECT MATTER" (Pages 2 - 3) for that same section presented in the Appeal Brief (Page 2) as filed on May 13, 2011, per MPEP § 1205.03(B).

Appellants submit that the "Section V." fully complies with the Rules.

The Commissioner is hereby authorized to charge any additional fees to our Deposit Account No. 02-3978.

Respectfully submitted,

HANS PETER WEITZEL et al.

By:


William G. Conger, Reg. No. 31,209
Attorney/Agent for Appellant

Date: June 15, 2011

BROOKS KUSHMAN P.C.
1000 Town Center, 22nd Floor
Southfield, MI 48075-1238
Phone: 248-358-4400
Fax: 248-358-3351

III. STATUS OF CLAIMS

Claims 34-51 are pending in this application. Claims 34-51 have been rejected and are the subject of this appeal. Claims 1-33 have been cancelled.

IV. STATUS OF AMENDMENTS

No amendment after final rejection has been filed.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The invention of claim 49 pertains to a curable mineral construction product comprising a water-redispersible polymer powder composition, the redispersible polymer powder composition consisting of a water-redispersible polymer powder and at least one biocidal additive (page 2, lines 19-30; page 10, line 21 to page 11, line 5; page 12, lines 1-10; claim 1 as filed) selected from the group consisting of bactericide active(s) (page 2, line 31 to page 3, line 19), fungicide active(s), and algicide active(s), the biologically active biocidal additive being present in the water redispersible polymer powder composition in an amount of 0.001 to 0.5 percent by weight based on the weight of the water redispersible polymer powder composition (page 3, lines 13-15), and wherein the water redispersible polymer powder composition optionally contains one or more of emulsifiers (page 8, lines 11-25), protective colloids (page 7, line 30 to page 8, line 10), antifoams (page 9, lines 29-31), antiblocking agents (page 9, lines 31-36), and hydrophobicizing agents (page 10, lines 4-9).

The subject matter of claim 43 is directed to a process for increasing resistance of a cured mineral building product to microbial growth (page 1, lines 26-31; page 2, lines 19-23; claim 1 as filed; page 10, line 36 to page 11, line 5) by adding to a curable mineral building product composition, a water dispersible polymer powder composition containing at least one spray dried water redispersible polymer powder (page 8, line 38 to page 11, line 5; Examples, page 11, line 9 to page 13, line 19) admixed with at least one solid biocidal active consisting of bactericide actives, fungicide actives, or algicide actives (page 2, line 31 to page 3, line 19; page 10, lines 16-19; claim 8 as filed (page 15, lines 6-11)).

The invention of claim 34 requires that the water redispersible polymer powder composition of claim 49 be prepared by spray drying an aqueous polymer dispersion together with the biocide (page 8, line 38 to page 9, line 13).

The invention of claim 44 requires that the redispersible polymer powder composition of claim 43 is prepared by spray drying an aqueous polymer dispersion with the biocide (page 8, line 38 to page 9, line 13).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

- A. Claim 43 stands rejected under 35 U.S.C. § 102(b) over Weitzel et al. U.S. Published Application 2003/0018121¹ (“*Weitzel*”).
- B. Claims 44-46 stand rejected under 35 U.S.C. § 103(a) over *Weitzel* in view of Botts et al. U.S. Patent No. 7,070,795 (“*Botts*”).
- C. Claims 49, 34-42, 47-48, and 50-51 stand rejected under 35 U.S.C. § 103(a) over Guerin et al. U.S. 6,369,153 (“*Guerin*”) in view of *Weitzel*.

¹ *Weitzel* has issued as U.S. Patent No. 6,740,692 on May 25, 2004. The “*Weitzel*” of the *Weitzel* publication is the same Dr. Hans-Peter Weitzel who is the inventor of the present application.